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WILBUR-ELLIS COMPANY
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 WILBUR-ELLIS COMPANY,

13 Plaintiff,

14 v.

15 WILLOWOOD, LLC, WILLOWOOD USA,
16 LLC, & WILLOWOOD CLOMAZONE, LLC

17 Defendants.
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Case No.

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Wilbur-Ellis Company (“Wilbur-Ellis”) brings this action against Defendants
 2 Willowood, LLC, Willowood USA, LLC, and Willowood Clomazone, LLC (together,
 3 “Willowood”).

4 **NATURE OF THE ACTION**

5 1. This is an action for copyright infringement under the copyright laws of the United
 6 States, 17 U.S.C. § 101, et seq. Wilbur-Ellis owns a federally registered copyright in the label of
 7 its Cerano® 5 MEG herbicide product. Willowood copied and is willfully infringing Wilbur-
 8 Ellis’ copyrighted Cerano® 5 MEG label for its own generic product, Clomazone 5 MEG.

9 **THE PARTIES**

10 2. Wilbur-Ellis Company is a corporation organized and existing under the laws of
 11 the State of California, with a principal place of business at 345 California Street, 27th Floor, San
 12 Francisco, California 94104.

13 3. On information and belief, Willowood USA, LLC is a limited liability company
 14 organized and existing under the laws of the State of Oregon, with a principal place of business at
 15 1600 NW Garden Valley Blvd., Suite 120, Roseburg, Oregon 97471 and corporate headquarters
 16 at 1099 E. Champlain Drive, Suite A254, Fresno, California 93720.

17 4. On information and belief, Willowood, LLC is a limited liability company organized
 18 and existing under the laws of the State of Oregon, with a principal place of business at 1600 NW
 19 Garden Valley Blvd., Suite 120, Roseburg, Oregon 97471.

20 5. On information and belief, Willowood Clomazone, LLC is a limited liability company
 21 organized and existing under the laws of the State of Oregon, with a principal place of business at
 22 1600 NW Garden Valley Blvd., Suite 120, Roseburg, Oregon 97471.

23 **JURISDICTION AND VENUE**

24 6. The Court has subject matter jurisdiction over Wilbur-Ellis’ copyright
 25 infringement claims pursuant to federal question jurisdiction, 28 U.S.C. §§ 1331, 1338, and the
 26 copyright laws of the United States, 17 U.S.C. § 101, et seq.

27 7. On information and belief, the Court has personal jurisdiction over Willowood
 28 LLC, Willowood USA, LLC, and Willowood Clomazone, LLC because they have committed acts

1 of copyright infringement in this judicial district, have systematic and continuous contacts in this
 2 judicial district, regularly transact business within this judicial district, and regularly avail
 3 themselves of the benefits of this judicial district.

4 8. On information and belief, Willowood, LLC registered with the Environmental
 5 Protection Agency (“EPA”) and California Department of Pesticide Regulation (“CDPR”) a label
 6 for the Clomazone 5 MEG product in preparation of marketing and sale of Clomazone 5 MEG
 7 throughout the United States, including in California and this judicial district.

8 9. On information and belief, Willowood, LLC and Willowood USA, LLC market
 9 and sell agrochemicals throughout the United States, including in California and this judicial
 10 district.

11 10. On information and belief, Willowood, LLC and Willowood USA, LLC are
 12 planning to market, sell, and distribute the Clomazone 5 MEG product throughout the United
 13 States, including in California and this judicial district. On information and belief, such
 14 marketing, sales, and distribution are now imminent or may already have begun.

15 11. On information and belief, Willowood Clomazone, LLC is involved in the
 16 development, manufacture, marketing, sale, and/or distribution of the Clomazone 5 MEG product
 17 for marketing, sale, and distribution throughout the United States, including in California and this
 18 judicial district.

19 12. Willowood, LLC, Willowood USA, LLC, and Willowood Clomazone, LLC
 20 infringe Wilbur-Ellis’ copyrighted Cerano® 5 MEG label by using, reproducing, copying,
 21 preparing derivative works from, distributing, and/or publicly displaying the infringing
 22 Clomazone 5 MEG label throughout the United States, including in California and this judicial
 23 district.

24 13. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

25 **FACTS**

26 14. In the early 2000s, Wilbur-Ellis developed its Cerano® 5 MEG product, a
 27 herbicide product for agricultural use. Cerano® 5 MEG uses a herbicidal chemical compound
 28 that is supplied by FMC Corporation (“FMC”) with the active ingredient clomazone. Wilbur-

1 Ellis formulates Cerano® 5 MEG as a granule intended for aerial application to rice crops for
 2 controlling watergrass, barnyard grass, and sprangletop. It manufactures, markets, and sells its
 3 Cerano® 5 MEG product in California.

4 15. To market and sell Cerano® 5 MEG, Wilbur-Ellis created a detailed product label.
 5 A true and correct copy of Wilbur-Ellis' label is attached hereto as Exhibit 1.

6 16. Herbicide labels, including the label for Cerano® 5 MEG, are long and
 7 complicated documents that provide extensive information concerning, *inter alia*, the product's
 8 contents, precautionary statements, proper handling instructions, safety and first-aid instructions,
 9 information regarding use, application rates, efficacy, and product use restrictions and limitations,
 10 and information concerning environmental, physical, and chemical hazards.

11 17. A significant investment of time, money, effort, and creativity are required to
 12 create and register herbicide product labels. Over the course of at least 3 years, Wilbur-Ellis
 13 invested well in excess of half a million dollars and significant employee time to create and
 14 register the Cerano® 5 MEG label.

15 18. Wilbur-Ellis registered its Cerano® 5 MEG label with the CDPR, EPA
 16 Subregistration No. 279-3269-AA-2935. This label is publicly available through Wilbur-Ellis'
 17 website and other public websites, such as Crop Data Management Systems, Inc.'s website and
 18 Agrian, Inc.'s website.

19 19. To protect its investment, Wilbur-Ellis registered the Cerano® 5 MEG label with
 20 the U.S. Copyright Office. The U.S. Copyright Office duly issued Registration No. TX 7-307-
 21 398 for Cerano® 5 MEG label with an effective date of March 1, 2011. A true and correct copy
 22 of Registration No. TX 7-307-398 is attached hereto as Exhibit 2.

23 20. On information and belief, in 2014, Willowood applied for approval to sell a
 24 generic version of Cerano® 5 MEG under the name Clomazone 5 MEG.

25 21. As part of the approval process, Willowood filed a product label with the EPA and
 26 CDPR, which is available through at least the EPA's publicly available website. A true and
 27 correct copy of Willowood's label, as submitted to the EPA, is attached hereto as Exhibit 3. The
 28 EPA and CDPR approved of Willowood's label, a nearly verbatim copy of Wilbur-Ellis'

1 copyrighted label, on February 25, 2014 and July 3, 2014, respectively.

2 22. The majority of the text of Willowood's Clomazone 5 MEG label is identical or
3 virtually identical to the label of Wilbur-Ellis' Cerano® 5 MEG label. Attached as Exhibit 4 is a
4 side-by-side comparison of Willowood's label, as submitted to the EPA, and of Wilbur-Ellis'
5 copyrighted label, that shows their substantial similarities.

6 23. Willowood has distributed and is distributing copies of its infringing label,
7 including through publicly available websites such as Crop Data Management Systems, Inc.'s
8 website and Agrian, Inc.'s website. A true and correct copy of Willowood's label, as distributed,
9 is attached hereto as Exhibit 5. Attached as Exhibit 6 is a side-by-side comparison of
10 Willowood's label, as distributed, and of Wilbur-Ellis' copyrighted label, that shows their
11 substantial similarities.

12 24. Willowood created the Clomazone 5 MEG label by copying Wilbur-Ellis'
13 copyrighted Cerano® 5 MEG label.

14 **FIRST CLAIM FOR RELIEF**

15 **(Copyright Infringement)**

16 25. Wilbur-Ellis incorporates by reference each and every allegation in the foregoing
17 paragraphs as though fully set forth herein.

18 26. Wilbur-Ellis owns a valid copyright in the Cerano® 5 MEG label.

19 27. Wilbur-Ellis obtained a federal copyright registration for the Cerano® 5 MEG
20 label, Registration No. TX 7-307-398.

21 28. Willowood's Clomazone 5 MEG label is substantially similar to Wilbur-Ellis'
22 Cerano® 5 MEG label.

23 29. Willowood copied Wilbur-Ellis' Cerano® 5 MEG label and used a substantial
24 portion of Wilbur-Ellis' copyrighted work in Willowood's Clomazone 5 MEG label.

25 30. Willowood has used, reproduced, copied, prepared derivative works from,
26 distributed, and/or public displayed the Clomazone 5 MEG label, including in connection with the
27 sale and marketing of the Clomazone 5 MEG product.

28 31. Willowood's use, reproduction, copying, preparation of derivative works from,

1 distribution, and/or public display of the Clomazone 5 MEG label infringes Wilbur-Ellis'
2 copyright in the Cerano® 5 MEG label under 17 U.S.C. § 501.

3 32. On information and belief, Willowood's copyright infringement is willful within
4 the meaning of the Copyright Act.

5 33. Wilbur-Ellis has been and continues to be damaged by Willowood's copyright
6 infringement.

7 34. Wilbur-Ellis has suffered and continues to suffer irreparable injury unless
8 Willowood's copyright infringement is enjoined by the Court.

9 **JURY DEMAND**

10 Wilbur-Ellis hereby requests a trial by jury, pursuant to Fed. R. Civ. P. 38(b), on all issues
11 so triable.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Wilbur-Ellis requests that judgment against Willowood be entered as
14 follows:

15 A. Finding that Willowood has infringed Wilbur-Ellis' copyright in the Cerano® 5
16 MEG label;

17 B. Finding that such infringement by Willowood was willful and deliberate;

18 C. Preliminary and permanent injunctive relief against Willowood, its affiliates,
19 subsidiaries, assigns, employees, agents, or anyone or any entity acting in privity or concert with
20 Willowood from infringing Wilbur-Ellis' copyright in the Cerano® 5 MEG label, and ordering
21 the recall and destruction of all infringing labels;

22 D. Damages adequate to compensate Wilbur-Ellis for Willowood's copyright
23 infringement, including an accounting if necessary;

24 E. Wilbur-Ellis' full costs, including reasonable attorney fees pursuant to 17 U.S.C. §
25 505 and any and all other applicable statutes, rules, and common law; and

26 F. Such other relief in law or equity as the Court deem just and appropriate.

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1 Dated: April 27, 2015

Elizabeth A. Howard
Diana M. Rutowski
ORRICK, HERRINGTON & SUTCLIFFE LLP

4 By: /s/ Elizabeth A. Howard

Elizabeth A. Howard
Attorneys for Plaintiff
WILBUR-ELLIS COMPANY